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CHAPTER 48.

PUBLIC INSURANCE ADJUSTERS

SECTION 38-48-10. Definitions.

As used in this chapter:

- (1) "Public insurance adjuster" means any individual who, for salary, fee, commission, or other compensation, engages in public adjusting and who is licensed under Section 38-48-20. A public insurance adjuster is not an attorney licensed to practice by the South Carolina Supreme Court who adjusts insurance losses in the course of the practice of law. A public insurance adjuster is not an adjuster representing an insurer and is not licensed in accordance with the provisions of Chapter 47.
- (2) "Public adjusting" means investigating, appraising or evaluating, and reporting to an insured in relation to a first party claim arising under insurance contracts, that insure the real or personal property, or both, of the insured. Public adjusting does not include acting in any manner in relation to claims for damages to or arising out of the operation of a motor vehicle. Public adjusting does not include any activities which may constitute the unauthorized practice of law. Nothing in this chapter shall be construed as permitting the unauthorized practice of law.

SECTION 38-48-20. License required for public adjusters.

Every individual commonly called a public adjuster, adjusting losses for an insured, must be licensed by the director or his designee. These individuals shall apply for a license on a form prescribed by the director or his designee. The written examination for a public adjuster license shall be the same as that prescribed for insurance adjusters. The director or his designee shall satisfy himself that each applicant for a public adjuster's license is an individual of good moral character, has sufficient knowledge of the insurance business and duties as a public adjuster, has not violated the insurance laws of the State, and is a fit and proper individual for the position. No license may be issued pursuant to reciprocal arrangements or agreements as provided in Section 38-48-40 to a nonresident public adjuster who resides in a state which has enacted a statute requiring the licensing of public adjusters and which refuses to license South Carolina public adjusters; however, a license may be issued to such applicants upon a successful completion of the examination for public adjusters prescribed by the director or his designee. Only licensed public adjusters may solicit business from an insured who has sustained an insured loss. Individuals engaged in providing public adjusting services without a license shall be deemed to be engaged in unauthorized transaction of insurance business and subject to the remedies provided in Chapter 25, as well as the disgorgement of fees or restitution to the insured for any fees paid.

SECTION 38-48-30. License application.

When an individual applies for a public adjuster's license, he shall supply the department his business and residence addresses and telephone numbers. The public adjuster shall notify the department within thirty days of any change in these addresses.

SECTION 38-48-40. Reciprocal agreements with other states for licensing of public adjusters.

The director or his designee may enter into reciprocal agreements with the insurance commissioners or directors of other states in regard to licensing of nonresident public adjusters if in his judgment these arrangements or agreements are in the best interests of the State and if the applicant for a public adjuster's license meets the minimum statutory requirements in this State for the issuance of a license.

SECTION 38-48-50. License fees.

The biennial fee for a public adjuster's license is eighty dollars payable in advance and fully earned when received, not refundable, transferable, nor proratable. However, when the laws of another state of the United States required in this State of nonresident public adjusters, the nonresident public adjusters shall pay an amount equal to the amount of charges imposed by the laws of this State upon public adjusters of this State.

SECTION 38-48-60. Term of license: cancellation: reimbursement.

A public adjuster's license is for an indefinite term, unless sooner revoked or suspended, if the biennial license fee is paid at the time and in the manner which the department provides by regulation. If the license fee for a public adjuster is not received when due, the license must be canceled. If the license is to be reinstated, an original application must be filed and a reinstatement fee equal to the biennial license fee unpaid must be paid in addition to the regular biennial license fee.

SECTION 38-48-70. Public adjuster as agent of the insured; standards of conduct.

Public insurance adjusters are declared to be acting as the agents of the insureds they represent in the adjustment of any loss. A public insurance adjuster shall:

- (a) be honest and fair in all communications with the insured and with the insurer or its representatives;
- (b) have no financial interests in any aspect of the insured's claim, other than the salary, fee, commission, or other compensations that may be established in the written contract between the insured and the public insurance adjuster;
- (c) not refer or direct any insured needing repairs or other services in connection with a loss to any person with whom the public insurance adjuster has a financial interest; nor to any person who will or is reasonably anticipated to provide the public adjuster any direct or indirect compensation for the referral of any resulting business;
- (d) not prevent or attempt to dissuade an insured from communicating with an insurer, the insurer's adjuster, an independent adjuster representing the insurer, an attorney, or any other person regarding the settlement of the insured's claim;
- (e) not engage in any conduct which constitutes the unauthorized practice of law;
- (f) not acquire any interest in salvage of property subject to his contract, except with the express written permission of the insured, after settlement with the insurer;
- (g) not solicit or enter into any agreement for the repair or replacement of damaged property on which the public adjuster has been engaged to adjust or settle claims; and
- (h) not offer or provide advice as to whether the insured's claim is covered by the insured's contract with the insurer.

SECTION 38-48-80. Written agreement between public adjuster and insured.

Any agreement between the insured and the public insurance adjuster for the services described in this chapter shall be in writing and signed by both parties. The contract shall:

- (a) state the full consideration for the public adjuster's services;
- (b) specify in bold and conspicuous language that the consideration, compensation, commission, fee, percentage, or salary due to the public adjuster shall be paid by the insured from any sums the public adjuster assists the insured in recovering and not paid by the insurer;
- (c) legibly state the full name and address as specified in the department's record of the licensed public adjuster;
- (d) state the insured's full name and street address, the address and description of the loss, and the name of the insured's insurance company and policy number;

- (e) disclose to the insured in bold, conspicuous language that (1) it is not necessary for the insured to hire a public adjuster; (2) the insured has the right to communicate directly with the insurer, the insurer's adjuster(s), the insured's counsel, or counsel for the insurer; and (3) the public adjuster is not an agent or employee of the insurer;
- (f) show the date on which the contract was signed by both parties;
- (g) clearly and conspicuously disclose the insured's right to rescind the contract within five working days or otherwise cancel it as provided by South Carolina law; and
- (h) clearly and conspicuously outline the services to be provided by the public adjuster to the insured. Promptly after the contract of the insured with the public adjuster has been executed, and after the time to rescind has elapsed, the public adjuster shall give written notice to the insurer or its adjuster or representative that the public adjuster has entered into a written contract with the insured.

SECTION 38-48-90. Referrals regulated; public adjusters shall not represent insurance companies; independent adjusters shall not act as public adjusters.

- (A) No public adjuster shall compensate or provide anything of value except as provided in Section 38-57-160 to a person who is not licensed as a public adjuster in return for the referral of a business prospect to the public adjuster; provided, however, a public adjuster may enter into an agreement with another licensed public adjuster for the referral of business and sharing of commissions or compensation. Such an arrangement must be disclosed to the insured in the written agreement.
- (B) No public adjuster shall represent or act as an adjuster representing an insurance company, either as an employee of the insurer or as an independent adjuster. No independent adjuster or adjuster licensed in accordance with the provisions of Chapter 47 shall act as a public insurance adjuster.

SECTION 38-48-100. Advertising.

All advertising by a public adjuster shall fairly and accurately describe the services to be rendered and shall not misrepresent either the public adjuster or the public adjuster's abilities and shall comply with the following requirements:

- (a) Advertisements must comply with all the requirements of Title 38 and the Unfair Trade Practices law.
- (b) All advertisements must state the full name of the public adjuster and the public adjuster's firm, if applicable, and the complete business address and phone numbers.
- (c) Advertisements shall not create an unjust expectation about results the public adjuster can achieve.

SECTION 38-48-110. Right of insured to rescind contract.

The insured shall have until the close of business on the fifth business day after signing the contract to rescind the agreement. The exercise of the right to rescind the agreement must be in writing and delivered to the public adjuster at the address shown on the agreement.

If the insured property that is the subject of the claim is not the primary residence of the insured or used by the insured primarily for personal, family, or household purposes, the insured may waive the right to rescind the agreement. The waiver shall be in writing and signed and dated by the insured.

SECTION 38-48-120. Record retention.

Every public adjuster shall maintain all records of losses and claims adjusted for three years after the settlement or closing of each claim.

SECTION 38-48-130. Unlawful acts.

It is unlawful for a person to:

- (a) act as a public adjuster on a contract made other than as authorized by the laws of this State or made by an insurer who is not licensed to do business in this State; or
- (b) adjust or aid in the adjustment, either directly or indirectly, of a claim arising under a contract of insurance not authorized by the laws of this State; or
- (c) engage in the unauthorized transaction of insurance business as defined in this article and Chapter 25; or
- (d) act as both a contractor and a public adjuster in the adjustment of a claim for an insured; or
- (e) violate any provision of this title.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than two years, or both.

SECTION 38-48-140. Violation; notice; penalties.

When the director or his designee determines after investigation that there has been a violation of this chapter by a public adjuster, the director or his designee, after providing notice and an opportunity for a hearing in accordance with the Administrative Procedures Act, may impose penalties provided for in Section 38-2-10.

SECTION 38-48-150. Severability of provisions.

Any provision of this statute that is deemed to be void, unenforceable, unconstitutional, or illegal by any court of competent jurisdiction shall be deemed severable and shall not affect the constitutionality, enforceability, or legality of the remaining provisions. The remaining provisions shall continue in full force and effect.

SECTION 38-48-160. Regulations.

The Department of Insurance shall promulgate regulations necessary to carry out the provisions of this chapter.